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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

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OFFICE OF PETITIONS

In re Application of
Shiizaki et al.
Application No. 09/885,001
Filed: June 21, 2001
Attorney Docket No. 1466.1039

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 1, 2004, to revive the above-identified application.

The petition is **granted**.

Facts:

A first and non-final Office action was mailed on June 19, 2003.

A request for a three month extension of time and a Notice of Appeal were filed on December 19, 2003.

The request for a three month extension of time was timely and proper. The request for a three month extension was accepted by the Office and entered.

The Notice of Appeal was improper and not entered. A Notice of Appeal may only be filed when the claims at issue have been finally rejected and/or twice rejected. The non-final Office action was not a final rejection and the Office action was the first Office action on the merits.

Since the Notice of Appeal was not entered and no other response had been filed to the non-final Office action, the application became abandoned as of December 20, 2003.

On May 19, 2004, a RCE and amendment were filed along with a request for a three month extension of time were filed. However, since the application was abandoned, neither paper was entered.

A Notice of Abandonment was mailed on June 1, 2004.

The instant petition was filed July 1, 2004, and is accompanied by an amendment in response to the non-final Office action mailed June 19, 2003.

Analysis:

The instant petition requests revival of the application. Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

A review of Office records indicates some of the fees which have been paid are refundable. The Notice of Appeal, the May 19, 2004 request for an extension of time, and the RCE, were not entered. Therefore, the Office will credit petitioner's deposit account with \$330 for the Notice of Appeal, \$770 for the RCE, and \$950 for the request for an extension of time. In other words, the Office will credit \$2,050 back to the deposit account.

The file is now being forwarded to Technology Center Art Unit 2674 for entry and consideration of the amendment filed on July 1, 2004.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



Charles Steven Brantley
Petitions Attorney
Office of Petitions